

Appl. No. 10/080,458
Attr. Docket No. G-275 (CP-1235)
Amdt. dated 07/19/2004
Reply to Office Action of 05/18/2004
Customer No. 27752

REMARKS

Application Amendments

Claims 1-24 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 9, and 17 have been amended as shown above. Support for the amendment to claims 1 and 9 can be found at page 9, lines 25-30 of the specification and in Examples 1-4 at page 14 of the specification. Support for the amendment to claim 17 can be found at page 9, lines 25-30 of the specification and in Examples 1-4 at page 14 of the specification, as well as at page 10, lines 20-22.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Provisional Double Patenting Rejections Over Co-Pending US Application No. 10/080,459

Claims 1-7, 9, 15-17, and 23-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending US Application No. 10/080,459. Additionally, claims 8, 10-14, and 18-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending US Application No. 10/080,459 in view of Applicant's statements in the Background of the Invention section of the specification of the present Application and US Patent No. 6,432,147 to Dias et al ("Dias").

Upon receiving notice of allowance of co-pending US Application No. 10/080,459, Applicant is prepared to file a properly executed terminal disclaimer in compliance with 37 CFR 1.321(c). Therefore, it is believed that these provisional rejections can be overcome.

Rejections Under 35 USC 103(a) Over US Patent No. 6,432,147 to Dias et al.

Claims 17-24 are rejected under 35 USC 103(a) as being unpatentable over US Patent No. 6,432,147 to Dias et al. ("Dias"). The Examiner asserts that Dias discloses a hair coloring composition comprising hydrogen peroxide present in Applicant's claimed range, Applicant's claimed polymer present in Applicant's claimed range, Applicant's claimed phosphate ester surfactants, Applicant's claimed cosolvents, and water, wherein the composition is within Applicant's claimed pH range. Dias does not specifically teach a range for the concentration of Applicant's claimed surfactant, however, the Examiner asserts that the exemplified compositions of Dias suggest a surfactant concentration of 1.5% to 1.7% which is within Applicant's claimed range. Applicant respectfully traverses the present rejection based on the following comments.

Appl. No. 10/080,458
Atty. Docket No. G-275 (CP-1235)
Amdt. dated 07/19/2004
Reply to Office Action of 05/18/2004
Customer No. 27752

Dias does not teach or suggest all of Applicant's claim limitations and, therefore, does not establish a *prima facie* case of obviousness (MPEP 2143.03). Applicant's developer composition claimed in claim 17, as currently amended, requires, *inter alia*, from about 6% to about 15 % of a hydrogen peroxide oxidizing agent, and from about 0.5% to about 5 % of a phosphate ester surfactant. Applicant's developer composition facilitates the removal of polymeric film formed on the surface of manufacturing equipment during or after the manufacture of the developer composition. This benefit is particularly important when stainless steel manufacturing equipment must be employed, as is typically the case for hair dye compositions which contain a hydrogen peroxide oxidizing agent present at a concentration in Applicant's claimed range.

First, Dias does not teach or suggest a developer composition containing from about 6% to about 15% of a hydrogen peroxide oxidizing agent. Rather, Dias discloses compositions containing from about 0.01% to less than about 3% by weight of the composition of an inorganic peroxygen oxidizing agent. See column 6, lines 45-53 of Dias. In Examples I-VII of Dias, the exemplified hair coloring compositions contain hydrogen peroxide at concentrations of from 0.7% to 2.5%. See column 32, lines 35-66 of Dias. Dias is directed generally to hair coloring compositions which can provide excellent hair coloring benefits while reducing hair damage by using substantially less of an inorganic peroxygen oxidizing agent as compared to a conventional oxidative hair coloring system. See column 6, lines 13-24 of Dias. As stated above, the benefit of Applicant's developer composition is particularly important in the manufacture of hair coloring compositions containing a hydrogen peroxide oxidizing agent present at a concentration in Applicant's claimed range because stainless steel manufacturing equipment typically must be used. However, it is these hair coloring compositions, which contain *higher hydrogen peroxide concentrations*, from which Dias specifically teaches away.

Second, Dias does not teach or suggest a developer composition containing from about 0.5% to about 5% of a phosphate ester surfactant. Dias broadly discloses a number of anionic surfactants suitable for inclusion in the compositions of Dias, among which are listed anionic surfactants such as alkyl phosphate esters and ethoxylated alkyl phosphate esters. However, Dias provides no suggestion to select, or no preference for, specifically phosphate ester surfactants, and Dias does not even specifically teach a range for the concentration of any surfactant. Although Dias provides exemplified compositions containing from 1.5% to 1.7% of surfactant, the specific surfactant that is exemplified as present in that range is the *nonionic* surfactant Cetareth-25. The exemplified compositions in Dias do not contain any *anionic* surfactant, let alone phosphate ester surfactant. While the teaching of the reference is not limited to its examples, it is the Examiner who is relying specifically on the exemplified compositions to assert that Dias teaches a surfactant

Appl. No. 10/080,458
Atty. Docket No. G-275 (CP-1235)
Amdt. dated 07/19/2004
Reply to Office Action of 05/18/2004
Customer No. 27752

range. However, as stated immediately above, the exemplified compositions of Dias do not contain phosphate ester surfactant at Applicant's claimed range.

Additionally, Dias fails to contemplate the benefit provided by Applicant's developer composition. No teaching or suggestion is made in Dias to incorporate phosphate ester surfactant in a developer composition containing anionic amphiphilic polymer in order to facilitate the removal of polymeric film formed during or after the manufacture of the developer composition on the surface of manufacturing equipment. Therefore, it would not have been obvious to one of ordinary skill in the art to incorporate phosphate ester surfactant at Applicant's claimed range of concentration in a hair coloring composition containing anionic amphiphilic polymer to achieve Applicant's developer composition. Accordingly, a *prima facie* case of obviousness has not been established with respect to Applicant's present claims 17-24.

Even if a *prima facie* case has been established, Applicant has overcome the presumption of obviousness by a showing of unexpected results for Applicant's claimed phosphate ester surfactant range, as currently amended. In the Examples at page 14, Table 1 and page 15, Table 2 of the specification, Applicant has demonstrated unexpected results regarding the benefit of incorporating phosphate ester surfactants in developer compositions containing anionic amphiphilic polymers. Specifically, Applicant has shown that incorporating phosphate esters in the described developer compositions facilitates the removal of polymeric film formed on the surface of manufacturing equipment during or after the manufacture of the developer composition. Developer compositions are known to contain various surfactants other than phosphate esters, yet even when those various surfactants are present in a developer composition containing anionic amphiphilic polymer, an adherent polymeric film that forms on the manufacturing equipment is still relatively difficult to remove. Applicant has shown by the examples in the specification of the present Application that polymeric film formed on equipment during manufacture of developer compositions containing anionic amphiphilic polymers have a significantly lower rinse time when the composition also contains up to about 5% of a phosphate ester surfactant as compared to the composition without a phosphate ester surfactant.

Therefore, Applicant's claims 17-24 are novel and nonobvious over Dias.

Applicant's Specification in view of US Patent No. 6,432,147 to Dias et al

Claims 1-16 are rejected under 35 USC 103(a) as being unpatentable over the state of the prior art allegedly admitted by Applicant in the Background of the Invention section of the specification of the present Application at pages 1-3 ("the Background") in view of US Patent No. 6,432,147 to Dias et al ("Dias"). The Examiner asserts that Applicant has admitted in the Background that thickened hair dye compositions comprising anionic amphiphilic polymers leave

Appl. No. 10/080,458
Atty. Docket No. G-275 (CP-1235)
Amdt. dated 07/19/2004
Reply to Office Action of 05/18/2004
Customer No. 27752

a polymeric film on stainless steel manufacturing equipment. The Examiner also asserts that Applicant admitted that the polymeric film is conventionally removed by a hot alkaline solution. The Examiner then asserts that the composition of Dias comprises the claimed ingredients and has the claimed pH. Thus, the Examiner asserts, the limitations of Applicant's method of cleaning have been met when the allegedly admitted state of the prior art in the Background is combined with the composition of Dias. Applicant respectfully traverses the present rejection based on the following comments.

The combination of the Background together with Dias does not teach or suggest all of Applicant's claim limitations and, therefore, does not establish a *prima facie* case of obviousness (MPEP 2143.03). As currently amended, Applicant's claims 1 and 9 require, *inter alia*, that during the preparation of the aqueous composition from about 0.5% to about 5% of a phosphate ester surfactant is incorporated in the aqueous composition. Although the Background states that hair color compositions containing anionic amphiphilic polymers tend to form an adherent polymeric film on manufacturing equipment and that hot alkaline solution has been used with some success to remove this polymeric film, neither the Background nor Dias teaches or suggests a method of cleaning a surface to which an adherent polymeric film has formed wherein the method requires incorporating phosphate ester surfactant at Applicant's claimed range in the composition containing anionic amphiphilic polymer. The Background states that developer compositions are known to contain various surfactants, such as Cetareth-20, Nonoxynol-4, and sulfated castor oil. However, the Background also states that developer compositions which contain such various surfactants and which also contain anionic amphiphilic polymer still tend to form adherent polymeric films on the surfaces of manufacturing vessels. As discussed above, Dias provides no suggestion to incorporate phosphate ester surfactants in the composition, and Dias does not even specifically teach a range for the concentration of any surfactant.

Therefore, it would not have been obvious to one of ordinary skill in the art to incorporate phosphate ester surfactant at Applicant's claimed range of concentration in a composition containing anionic amphiphilic polymer, during preparation of the composition, to achieve Applicant's methods of cleaning. Accordingly, a *prima facie* case of obviousness has not been established with respect to Applicant's present claims 1-16.

Alternatively, and as discussed above, even if a *prima facie* case has been established, Applicant has overcome the presumption of obviousness by a showing of unexpected results for Applicant's claimed phosphate ester surfactant range, as currently amended. Specifically, in the Examples at page 14, Table 1 and page 15, Table 2 of the specification, Applicant has shown that incorporating phosphate esters in the described developer compositions facilitates the removal of polymeric film formed on the surface of manufacturing equipment during or after process

Appl. No. 10/080,458
Atty. Docket No. G-275 (CP-1235)
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Reply to Office Action of 05/18/2004
Customer No. 27752

manufacture of the developer composition. Applicant has shown that polymeric film formed on equipment during manufacture of developer compositions containing anionic amphiphilic polymers have a significantly lower rinse time when the composition also contains up to about 5% of a phosphate ester surfactant as compared to the composition without a phosphate ester surfactant. See page 14, Table 1 and page 15, Table 2 of the specification.

Therefore, Applicant's claims 1-16 are novel and nonobvious over the combination of the Background and Dias.

CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-24.

Respectfully submitted,

Stanley Pohl et al.

By M. Dressman
Marianne Dressman
Attorney for Applicant(s)
Registration No. 42,498
(513) 626-0673

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